

STATE OF MICHIGAN
COURT OF APPEALS

TIBOR L. GYARMATI and TERRIE
GYARMATI,

Plaintiffs-Appellants,

v

JAY A. BIELFIELD, DIANE BIELFIELD and
BLOOMFIELD CHARTER TOWNSHIP,

Defendants-Appellees.

FOR PUBLICATION
May 4, 2001
9:10 a.m.

No. 214338
Oakland Circuit Court
LC No. 97-002290-CK

Updated Copy
June 22, 2001

Before: Gribbs, P.J., and M.J. Kelly and Sawyer, JJ.

SAWYER, J. (concerning in part and dissenting in part).

I respectfully dissent in part.

I agree with the majority the plaintiffs do not have standing to enforce the ordinance. *Comstock v Wheelock*, 63 Mich App 195, 202; 234 NW2d 448 (1975). Therefore, I agree that summary disposition in favor of the township was appropriate. However, I disagree that plaintiffs did not have standing to seek a declaratory judgment regarding their obligations under the easement with respect to the Bielfields.

First, as the majority acknowledges, the issue whether the township would enforce its ordinance is irrelevant to this case. However, plaintiffs are in a position where they have certain obligations under an easement that may or may not violate a local ordinance. Therefore, it is perfectly reasonable for them to seek a declaratory judgment to determine exactly what obligations under the easement, if any, they must meet in light of the restrictions imposed by the ordinance. The majority is simply wrong in its statement that plaintiffs are "seeking enforcement of the ordinance by requesting that the court declare that the Bielfields may not use the easement for riparian purposes." *Ante* at _____. With respect to the Bielfields, what plaintiffs are seeking is a determination of to what extent, if any, the easement is enforceable in light of the township's ordinance.

Plaintiffs are in an untenable position: they must determine if the easement violates the ordinance. If they reach the wrong decision on that issue, then they face the possibility of being sued by defendants for violating the easement or criminal enforcement by the township for

violating the ordinance. To me, plaintiffs' position is perfectly reasonable: to seek a declaratory judgment of their obligations under the easement so as to avoid the possibility of violating either the easement or the ordinance.

For these reasons, I conclude that plaintiffs are entitled to seek a declaratory judgment to determine the extent to which they are obligated to comply with the easement in light of the restrictions imposed by the ordinance. Plaintiffs have standing to obtain a declaratory judgment so as not to be put in the position of having to violate either the ordinance or the easement, or even both. Therefore, I would reverse the decision of the circuit court with respect to the summary disposition for the Bielfields.

/s/ David H. Sawyer